

Order

**Michigan Supreme Court
Lansing, Michigan**

April 13, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-04

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendments of Rules
3.915, 3.963, 3.965, 3.966, 3.972, 3.973,
3.974, 3.975, 3.976, and 3.978 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.915, 3.963, 3.965, 3.966, 3.972, 3.973, 3.974, 3.975, 3.976, and 3.978 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 3.915 Assistance of Attorney

(A) [Unchanged.]

(B) Child Protective Proceedings.

(1) [Unchanged.]

(2) Child.

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the

lawyer-guardian ad litem has met or had contact with the child, as required by the court or MCL 712A.17d(1)(d) and if the ~~attorney~~ lawyer-guardian ad litem has not met or had contact with the child, the court shall require the lawyer-guardian ad litem to state, on the record, ~~his or her~~ the reasons for failing to do so.

(b) [Unchanged.]

(C)-(E)[Unchanged.]

Rule 3.963 Protective Custody of Child

(A) [Unchanged.]

(B) Court-Ordered Custody.

- (1) The court may issue a written order authorizing a child protective services worker or designee ~~an officer or other person~~ to immediately take a child into protective custody when, after upon presentment of proofs as required to by the court of a petition, a the judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. When appropriate, the court shall make a judicial determination that reasonable efforts to prevent removal of the child have been made. The court may also include in such an order authorization to enter specified premises to remove the child.
- (2) The written order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for that determination.

(3) [Unchanged.]

(C) [Unchanged.]

Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)-(10)[Unchanged.]

- (11) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care ~~the placement of the child~~ pending trial. The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722.631.

(12)-(13)[Unchanged.]

(C) Pretrial Placement; Contrary to the Welfare Determination.

(1)-(2)[Unchanged.]

- (3) Findings. If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home and the reasons supporting that finding. If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be made on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.

(4)-(7)[Unchanged.]

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.

- (1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether the agency has made reasonable efforts to prevent the removal of the child or that reasonable efforts to prevent removal are not required. The court must make this determination at the earliest possible time, but no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.
- (2) Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that

- (a) the parent has subjected the child to aggravated circumstances as listed in Sections 18(1) and (2) of the Child Protection Law, MCL 722.638(1) and (2) 712A.19b(3)(k); or
- (b) the parent has been convicted of 1 or more of the following:
 - (i) murder of another child of the parent,
 - (ii) voluntary manslaughter of another child of the parent,
 - (iii) aiding or abetting, or attempting, conspiring, or soliciting to commit such a murder, or aiding and abetting the commission of such a voluntary manslaughter, of another child of the parent, or
 - (iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or
- (c) parental rights of the parent with respect to a sibling have been terminated involuntarily.

(E) [Unchanged.]

Rule 3.966 Other Placement Review Proceedings

(A) Review of Placement Order and Initial Service Plan.

- (1) On motion of a party, the court must review the ~~custody order,~~ placement order, or the initial service plan, and may modify ~~the~~these orders and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal custodian is requested, determine whether the conditions in MCR 3.965(C)(2) exist.
- (2) If the child is removed from the home and disposition is not completed, the progress of the child must be reviewed no later than 182 days from the date the child was removed from the home.

(B)-(C) [Unchanged.]

Rule 3.972 Trial

(A) Time. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause under MCR 3.923(G). If

the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is ~~placed by the court~~ removed from the home unless the trial is postponed:

- (1) on stipulation of the parties for good cause;
- (2) because process cannot be completed; or
- (3) because the court finds that the testimony of a presently unavailable witness is needed.

When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that releasing the child to the custody of the parent, guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

If the child has been removed from the home, a review hearing must be held within 182 days of the date of the child's removal from the home, even if the trial has not been completed before the expiration of that 182-day period.

(B)-(E) [Unchanged.]

Rule 3.973 Dispositional Hearing

(A)-(B)[Unchanged.]

- (C) Time. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court. When the child is in placement, the interval may not be more than ~~35~~ 28 days, except for good cause.

(D)-(H)[Unchanged.]

Rule 3.974 Post-Dispositional Procedures: Child at Home

~~(A)~~—Review of Child's Progress.

- (1) General. The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction. ~~A progress review does not require a hearing.~~
- (2) Time. If the child was never removed from the home, the progress of the child must be reviewed no later than 182 days from the date the petition was filed and no later than every 91 days after that for the first year that the

child is subject to the jurisdiction of the court. After that first year, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding hearing until the court dismisses its jurisdiction. after entry of the original order of disposition if the child remained at home following the initial dispositional hearing. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care. If the child was removed from the home and subsequently returned to the home, review hearings shall be held in accordance with MCR 3.975.

- (3) Change of Placement.Subsequent Removal. The court may not order a child removed from his or her home solely on the basis of a review hearing. If it appears from evidence presented at a review hearing that a child may be at risk, the court may order that the child be taken into protective custody in accordance with MCR 3.963, and a supplemental petition must be filed and a preliminary hearing held in accordance with MCR 3.965. Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E).

~~(B) — Emergency Removal~~

- (1) ~~General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.~~
- (2) ~~Notice. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921.~~
- (3) ~~Emergency Removal Hearing. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must~~

~~make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.~~

- ~~(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:~~
 - ~~(i) to be represented by an attorney at the dispositional review hearing;~~
 - ~~(ii) to contest the continuing placement at the dispositional review hearing within 14 days; and~~
 - ~~(iii) to use compulsory process to obtain witnesses for the dispositional review hearing.~~
- ~~(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.~~

~~(C) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.~~

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A)-(B)[Unchanged.]

(C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

- (1) not more than 182 days after the child's removal from his or her home and no later than every 91 days following entry of the original order of disposition after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and

no later than every 182 days from each preceding review hearing thereafter until the case is dismissed; or

- (2) if a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, not more~~no~~ later than every 182 days after the child has been removed from his or her home and no later than 182 days after that as long as the child is subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency~~first permanency planning hearing if the child is subject to a permanent foster family agreement or in a relative placement that is intended to be permanent as provided in MCR 3.976(E)(3).~~

A review hearing under this subrule shall not be canceled or delayed beyond the number of days required in this subrule, regardless of whether a petition to terminate parental rights or another matter is pending.

(D)-(F)[Unchanged.]

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

- (1) order the return of the child home,
- (2) ~~order placement of the child if removal from the parent, guardian, or legal custodian would be appropriate for the welfare of the child,~~
- (23) change the placement of the child,
- (34) modify the dispositional order,
- (45) modify any part of the case service plan,
- (56) enter a new dispositional order, or
- (67) continue the prior dispositional order.

(H) ~~Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.~~

Rule 3.976 Permanency Planning Hearings

(A) [Unchanged.]

(B) Time.

(1) An initial permanency planning hearing must be held within 28 days after a judicial determination that reasonable efforts to reunite the family or to prevent removal are not required on the basis of one of the following circumstances: ~~petition has been adjudicated and both of the following occur:~~

(a) There has been a judicial determination that the child's parent, guardian, custodian, or nonparent adult has subjected the child to aggravated circumstances as listed in sections 18(1) and (2) of the Child Protection Law, 1975 PA 238, MCL 722.638, or A court of competent jurisdiction has determined that

(i) ~~a parent is found to have abused the child, or a sibling of the child, and the abuse included one or more of the circumstances in MCL 712A.19a(2), or~~

(ii) ~~the parent's rights to another child were terminated involuntarily, and~~

(b) ~~the court has determined that reasonable efforts are not required to reunify the child and the family.~~

(b) the parent has been convicted of one or more of the following:

(i) murder of another child of the parent;

(ii) voluntary manslaughter of another child of the parent;

(iii) aiding or abetting, or attempting, conspiring, or soliciting to commit the murder of another child of the parent, or aiding and abetting the voluntary manslaughter of another child of the parent, or the attempted murder of the child or another child of the parent; or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent.

- (c) the parent has had rights to one of the child's siblings involuntarily terminated.
 - (2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than ~~one year~~ 12 months after the child's removal from the home, regardless of whether any supplemental petitions are pending in the case. ~~an original petition has been filed. The hearing must not be extended or delayed for reasons such as a change or transfer of staff or workers at the supervising agency.~~
 - (3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than ~~one year~~ 12 months after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a ~~dispositional~~ review hearing.
 - (4) The judicial determination to finalize the court-approved permanency plan must be made within the prescribed time limits.
- (C) Notice. The parties entitled to participate in a permanency planning hearing include the parents of the child, if the parent's parental rights have not been terminated, the child, if the child is of an appropriate age to participate, foster parents, pre-adoptive parents, and relative caregivers. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.
- (D) [Unchanged.]
- (E) Determinations; Permanency Options.
- (1)-(2)[Unchanged.]
 - (3) Other ~~Permanency Placement~~ Plans. If the court does not return the child to the parent, guardian, or legal custodian, and if the agency demonstrates that

termination of parental rights is not in the best interest of the child, the court ~~must~~ may either

- (a) continue the placement of the child in foster care for a limited period to be set by the court while the agency continues to make reasonable efforts to finalize the court-approved permanency plan for the child, if the court determines that other permanent placement is not possible, or
- (b) place the child with a fit and willing relative, or in foster care on a long-term basis if the court determines that it is in the child's best interests.
- (c) upon a showing of compelling reasons, place the child in an alternative planned permanent living arrangement.

The court must articulate the factual basis for its determination in the court order adopting the permanency plan.

Rule 3.978 Post-Termination Review Hearings

- (A) Review Hearing Requirement. ~~Unless the child has been placed in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, i~~If a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and at least not later than every 91 days after that hearing for the first year following termination of parental rights to the child. At the post-termination review hearing, the court shall~~to~~ review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency. If the child is residing in another permanent planned living arrangement or is placed with a fit and willing relative and the child's placement is intended to be permanent, the court must conduct a hearing not more than 182 days from the preceding review hearing.

(B)-(D) [Unchanged.]

Staff Comment: The proposed amendment of Michigan Court Rule 3.915 corresponds with the January 3, 2005 amendments of MCL 712A.17d enacted in 2004 PA 475. Other changes in MCR 3.915 are stylistic changes of the rule's language.

The proposed amendment of MCR 3.963(B)(1) would reflect the reality that family division judges or referees are not always presented with a petition when a request is made to remove a child from the home. In emergency circumstances, a police officer or social worker may seek the court's permission to remove a child from a home, but will not have an opportunity to draft a petition before seeking the child's removal.

The proposed amendment of MCR 3.965(B)(11) would more accurately reflect the decisions made at the preliminary hearing in family division courts.

The proposed amendments of MCR 3.965(C)(3) would require not only that the findings be made, but that the reasons supporting the findings be explicitly set forth.

The proposed amendments of MCR 3.965(D)(2) would conform the rule language to that of the recent amendments of the "reasonable efforts" language in MCL 712A.19a, as amended by 2004 PA 473 and would make its language consistent with the proposed "reasonable efforts" language in MCR 3.976(B)(1).

The proposed amendments of MCR 3.966 would delete the term "custody order," and add the requirement from 2004 PA 477 that a review hearing occur within 182 days of a child's removal from the home.

The proposed amendments of MCR 3.972 would conform the rule language to the requirements of the Adoption and Safe Families Act and would foster compliance with the timing requirements of that act, thereby ensuring that children in foster care will receive federal funding.

The proposed amendment of MCR 3.973(C), reducing the time for holding a dispositional hearing from 35 to 28 days, would conform the time for resolving an abuse and neglect case to the mandatory federal time lines for ensuring that a child removed from the home receives federal foster care funding.

The proposed amendment of MCR 3.974(A)(2) would conform the review hearing time lines to recent statutory amendments of MCL 712A.19 as implemented by 2004 PA 477. The proposed amendment of subrule B would clarify that removal of a child who remained at home following disposition must be conducted pursuant to MCR 3.963 and MCR 3.965.

The proposed amendment of MCR 3.975 would conform the review hearing time lines to statutory amendments of MCL 712A.19 as implemented by 2004 PA 477.

The proposed amendments of MCR 3.976(B)(1) would track amendments of MCL 712A.19a of the Juvenile Code as adopted by 2004 PA 473. The change of the phrase "one year" to "12 months" in subrules B(2) and (3) would conform the rule's language to

that used in the Juvenile Code and to the other family division rules that generally mention time limits in terms of months rather than years. The additional language in subrule 2 and new subrule 4 would ensure that the permanency planning hearing is completed within the time limitations required by the Adoption and Safe Families Act (ASFA), 42 USC 675(5)(C). Compliance with ASFA is necessary for a child placed in foster care to receive federal funds. 42 USC 672. Proposed amendments of MCR 3.975(C) would clarify, in compliance with federal regulations, which specific parties are entitled to participate in permanency planning hearings. Proposed amendments of MCR 3.976(E)(1) would clarify the kinds of placement decisions courts must make in order to comply with the Children's Bureau's interpretation of the ASFA regarding qualifying placements for federal foster care funds.

The proposed amendment of MCR 3.978(A) would clarify a misconception created by the existing language of the subrule. Because the current language appears to create an exception for relative placements and permanent foster care arrangements, courts often failed to hold the requisite post-termination review hearings in such situations. The proposed amendment would make it clear to family division courts that they are required to hold post-termination review hearings even where the child is placed with a relative or in a long-term foster care setting. The phrase "permanent planned living arrangement" replaces the reference to "permanent foster family agreement." The substituted phrase comports with the Children's Bureau's interpretation of the ASFA regarding qualifying permanent placements for receipt of federal foster care funds.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2006, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-04. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/Resources/Administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 13, 2006

Corbin R. Davis
Clerk